



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

BJG  
Docket No: 7468-02  
13 September 2002

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: CAPT [REDACTED] USMCR (AR), [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 15 May 02 w/attachments  
(2) HQMC MMER/PERB memo dtd 14 Aug 02  
(3) Subject's ltr dtd 30 Aug 02  
(4) HQMC RA memo dtd 12 Aug 02  
(5) Memo for record dtd 3 Sep 02  
(6) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness reports for 1 June to 31 October 1996 and 1 November to 6 December 1996, copies of which are in enclosure (1) at Tabs A and B, respectively. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removing the contested fitness report for 1 June to 31 October 1996. Petitioner further requested removing his failure of selection before the Fiscal Year 2003 Marine Corps Reserve (Active Reserve) Major Selection Board, so as to be considered by the selection board that next convenes to consider officers of his category for promotion to the grade of major as an officer who has not failed of selection to that grade.

2. The Board, consisting of Ms. Davies and Messrs. Nicholson and Schultz, reviewed Petitioner's allegations of error and injustice on 12 September 2002, and pursuant to its regulations, determined that the limited corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Regarding the remaining contested fitness report for 1 November to 6 December 1996, Petitioner contends that this report is adverse, but was not referred to him, as it should have been, for the opportunity to make a rebuttal; that the comments and marks are inconsistent; that this report was submitted at the same time as the preceding report at issue, giving him no time to improve; and finally, that this report, in which he was ranked below all six of the other captains compared with him, was an attempt to help the careers of the other officers.

c. Enclosure (2), the report of the HQMC PERB in Petitioner's case, reflects their decision to grant removal of the report for 1 June to 31 October 1996, but deny relief respecting the report for 1 November to 6 December 1996. They found the latter report was not adverse; that the marks and comments were not inconsistent; and that Petitioner had failed to demonstrate the report represented an effort to bolster the careers of other officers.

d. Petitioner's letter at enclosure (3) rebutted the PERB decision to deny removal of the fitness report for 1 November to 6 December 1996. He reiterated his contentions that this report is adverse and that he was not given time to improve. He argued that the comment "His efforts in legal management continue to show improvements" effectively nullifies the PERB action removing the preceding report. Concerning his contention that the remaining contested report was intended to help other officers, he alleged that the other six captains ranked above him were senior to him, and that the majority had the same military occupational specialty (MOS) as the reporting senior.

e. In correspondence attached as enclosure (4), as clarified by the memorandum for the record at enclosure (5), the HQMC office having cognizance over the subject matter of Petitioner's request to strike his failure of selection for promotion has commented to the effect that this request has merit and warrants favorable action, in light of the PERB decision to remove the fitness report for 1 June to 31 October 1996.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (4) and (5), the Board finds the existence of an injustice warranting limited relief, specifically, removal of Petitioner's failure of selection for promotion.

In substantial concurrence with the PERB report at enclosure (2), the Board concludes that Petitioner's fitness report for 1 November to 6 December 1996 should stand. They are unable to find he was not counseled during the reporting period about any deficiencies that may have been perceived. In this regard, they observe that counseling takes many forms, so the recipient may not recognize it as such when it is provided. They do not consider the comment about his continued improvement in legal management refers to or reveals the content of the fitness report PERB directed removing. Finally, they are not convinced that his peer ranking reflected bias in favor of the other captains.

In view of the above, the Board directs the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to major as an officer who has not failed of selection for promotion to that grade.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

d. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
JONATHAN S. RUSKIN  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
W. DEAN PFEIFFER  
Executive Director



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:  
1610  
MMER/PERB  
AUG 14 2002

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
CAPTAIN ██████████ USMC

Ref: (a) Captain ██████████ DD Form 149 of 15 May 02  
(b) MCO P1610.7D w/Ch 1

Encl: (1) CMC Advisory Opinion 1600 MM01-4 of 12 Aug 02

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 22 July 2002 to consider Captain ██████████ petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 960601 to 961031 (GC)
- b. Report B - 961101 to 961206 (EN)

Reference (b) is the performance evaluation directive governing the submission of both reports.

2. The petitioner contends that both reports are adverse, yet he was not afforded an opportunity to comment on either. With specific regard to Report B, the petitioner argues that the report was ". . . an attempt to help the career of the other officers" against whom he was rated (Item 15. He also challenges the marks of "excellent" in Section B as *de facto* adverse.

3. In its proceedings, the PERB concluded that:

- a. The removal of Report A is warranted and has been directed.
- b. Report B is both administratively correct and procedurally complete as written and filed.

(1) The Board finds no compelling reason to believe that the petitioner's placement in Item 15 of Report B was an outward attempt by the Reporting Senior to bolster the careers of the

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
CAPTAIN [REDACTED] USMC

other six officers who received an observed mark in that category. Unless specifically explained by the Reporting Senior, any "insight" into an individual's placement in Item 15 is viewed as nothing more than speculation.

(2) Simply stated, there is absolutely nothing "adverse" in Report B. Likewise, there is no inconsistency between the marks assigned in Section B and the comments contained in Section C. The overall report portrays successful performance and accomplishment of duties, albeit not to the degree desired by the petitioner.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report B should remain a part of Captain [REDACTED] official military record.

5. The enclosure is furnished to assist in adjudicating Captain [REDACTED] request to remove his failure of selection.

6. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps  
Deputy Director  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps

7468-02



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:  
1100  
RA  
AUG 12 2002

RESERVE AFFAIRS DIVISION COMMENT on Head, PERB ltr 1610  
of 24 Jul 02

Subj: CORRECTION TO NAVAL RECORD IN THE CASE OF  
CAPTAIN [REDACTED] USMCR

Ref: (a) Your ltr dtd 24 July 2002

1. After careful review, this department concurs with the actions requested within the reference.
2. In addition to the actions requested by the PERB within the reference, Captain [REDACTED] requests removal of his failure of selection, however, MCTFS does not indicate any draw case code. But, in pursuit of his intent, we recommend Captain [REDACTED] submit for remedial promotion consideration through MMPR.
3. At the time Captain [REDACTED] failed of selection, he had evaluations that spanned over eight years, however two of those years were inactive service and are not credited towards satisfactory SMCR service. As such, the fitness report in question would have a greater impact on his career if it remained in his record. <sup>A</sup>negative (B)
4. Point of contact is Lieutenant Colonel [REDACTED]

[REDACTED]

By direction

DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)  
PERFORMANCE SECTION  
2 NAVY ANNEX, SUITE 2432  
WASHINGTON, DC 20370-5100  
TELEPHONE: (703) 614-2293 OR DSN 224-2293  
FACSIMILE: (703) 614-9857 OR DSN 224-9857

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MEMORANDUM FOR THE RECORD

DATE: 3SEP02

DOCKET NO: [REDACTED]

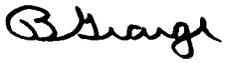
PETITIONER (PET): CAPT J. [REDACTED], USMCR

PARTY CALLED/AGENCY: [REDACTED] USMC, HQMC RA

TELEPHONE #: [REDACTED]

WHAT I SAID: I ASKED [REDACTED] HE WAS REFERRING TO THE FITREP THE PERB REMOVED WHEN HE SAID THE "REPORT IN QUESTION", AND WHAT RECOMMENDATION HIS OFFICE HAD RE PET'S REQ TO REMOVE HIS FOS.

WHAT PARTY SAID: [REDACTED] INFORMED ME THAT HE WAS REFERRING TO THE FITREP THE PERB REMOVED, AND THAT RA WAS MAKING A FAVORABLE RECOMMENDATION RE REMOVING PET'S FOS.

  
BRIAN J. GEORGE